

This memorandum provides information on a provision of the recently enacted Food, Conservation, and Energy Act of 2008 (P.L. 110-246) that applies to procurements in the Child Nutrition Programs. Section 4302 of P.L. 110-246 amended section 9(j) of the Richard B. Russell National School Lunch Act (NSLA) to require the Secretary of Agriculture to encourage institutions operating the Child Nutrition Programs to purchase unprocessed locally grown and locally raised agriculture products.

As amended, effective October 1, 2008, the NSLA allows institutions receiving funds through the Child Nutrition Programs to apply a geographic preference when procuring unprocessed locally grown or locally raised agriculture products. This applies to operators of all the Child Nutrition Programs, including the National School Lunch Program, School Breakfast Program, Fresh Fruit and Vegetable Program, Special Milk Program, Child and Adult Care Food Program, and Summer Food Service Program, as well as to purchases of fresh produce for these programs by the Department of Defense.

The law also applies to State Agencies which are making purchases for any of the aforementioned Child Nutrition Programs. While the statute permits institutions to apply a geographic preference to the maximum extent practicable and appropriate, it does not require institutions to purchase locally grown and locally raised agricultural products, or to apply a geographic preference in their procurements of these products. Moreover, States cannot mandate through law or policy that institutions apply a geographic preference when conducting these procurements, because the NSLA grants this authority directly to the institutions.

The institution responsive for the procurement has the discretion to determine whether and how a geographic preference meets its needs. Additionally, the procuring institution may define the area for any geographic preference (e.g., State, county, region, etc.). Geographic preference may only be applied to the procurement of unprocessed agricultural products which are locally grown and locally raised, and that have not been cooked, seasoned, frozen, canned, or combined with any other products. As specified in the Joint Explanatory Statement of the Committee of Conference, the Managers of the legislation used the term “unprocessed” to preclude the use of geographic preference for agricultural products that have significant value added components. The Managers do not intend to preclude de minimis handling and preparation such as might be necessary to present an agricultural product to a school food authority in a useable form, such as washing vegetables, bagging greens, butchering livestock and poultry, pasteurizing milk, and putting eggs in a carton.” (Joint Explanatory Statement, p. 107). Additionally, using a minimal amount of preservatives on locally grown produce may be needed for the purpose of preventing spoilage and would be acceptable. It is also important to note that all milk served in the Child Nutrition Programs must be pasteurized and meet State and local standards. Pasteurized milk is the only dairy product for which geographic preference may be applied.

While a geographic preference may be used to encourage the purchase of locally grown and locally raised products by enabling an institution to grant an advantage to local growers, this provision does not eliminate the requirement for procurements to be conducted in a manner that allows for free and open competition, consistent with the purchasing institution’s responsibility to be responsible stewards of federal funds.